



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-469-818]

#### **Ripe Olives from Spain: Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 20, 2022, the U.S. Department of Commerce (Commerce) issued its final determination under section 129 of the Uruguay Round Agreements Act (URAA), regarding the countervailing duty (CVD) investigation of ripe olives from Spain. On January 12, 2023, the U.S. Trade Representative (USTR) directed Commerce to implement the section 129 final determination, which renders Commerce's determinations in the CVD investigation not inconsistent with the World Trade Organization (WTO) dispute settlement findings in *United States – Antidumping and Countervailing Duties on Ripe Olives from Spain*, WT/DS577 (December 20, 2021) (DS577). As a result, Commerce is now implementing the section 129 final determination.

**DATES:** Applicable January 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1785 and (202) 482-5075, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### Nature of the Proceeding

Section 129 of the URAA governs the nature and effect of determinations issued by Commerce to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that “notwithstanding any provision of the

Tariff Act of 1930,” upon a written request from USTR, Commerce shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.<sup>1</sup> The Statement of Administrative Action Accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), variously refers to such a determination by Commerce as a “new,” “second,” and “different” determination.<sup>2</sup> After consulting with Commerce and the appropriate congressional committees, USTR may direct Commerce to implement, in whole or in part, the new determination made under section 129 of the URAA.<sup>3</sup> Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date on which USTR directs Commerce to implement the new determination.<sup>4</sup> The new determination is subject to judicial review, separate and apart from judicial review of Commerce’s original determination.<sup>5</sup>

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<sup>1</sup> See 19 U.S.C. 3538(b)(2).

<sup>2</sup> See SAA at 1025, 1027.

<sup>3</sup> See 19 U.S.C. 3538(b)(4).

<sup>4</sup> See 19 U.S.C. 3538(c).

<sup>5</sup> See 19 U.S.C. 1516a(a)(2)(B)(vii).

## Background

On July 11, 2022, Commerce informed interested parties that it was initiating administrative action under section 129 of the URAA to comply with the recommendations and rulings of the WTO Dispute Settlement Body in DS577.<sup>6</sup> On September 23, 2022, Commerce addressed each of the issues and conclusions of the panel in DS577 through a preliminary determination memorandum.<sup>7</sup> We invited interested parties to comment on the Preliminary Determination.<sup>8</sup> After receiving case briefs and rebuttal comments from the interested parties, Commerce issued its final determination for the section 129 determination on December 20, 2022.<sup>9</sup> On January 12, 2023, USTR notified Commerce that, consistent with section 129(b)(3) of the URAA, consultations with Commerce and the appropriate congressional committees with respect to the December 20, 2022 determination have been completed and USTR directed Commerce to implement the determination in accordance with section 129(b)(4) if the URAA.

## Final Determination: Analysis of Comments Received

The issues raised in the comments and rebuttal comments submitted by the interested parties to this proceeding are addressed in the Final Determination. The Final Determination is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Final Determination can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

## Final Determination: Recalculating Countervailing Duty Rates

The recalculated countervailable subsidy rates, as included in the Final Determination and which remain unchanged from the Preliminary Determination in this section 129 proceeding

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<sup>6</sup> See *Notice of Commencement of a Compliance Proceeding Pursuant to Section 129 of the Uruguay Round Agreements Act*, 87 FR 41109 (July 11, 2022).

<sup>7</sup> See Memorandum, "Ripe Olives from Spain: Preliminary Section 129 Determination Regarding the Countervailing Duty Investigation," dated September 23, 2022 (Preliminary Determination).

<sup>8</sup> *Id.* at 22-23; see also Commerce's Letter, "Ripe Olives from Spain: Deadline for Submission of Factual Information and Extension of Deadline for Case and Rebuttal Brief," dated October 17, 2022.

<sup>9</sup> See Memorandum, "Ripe Olives from Spain: Final Section 129 Determination Regarding the Countervailing Duty Investigation," dated December 20, 2022 (Final Determination).

for each company, are as follows:

<b>Exporter/Producer</b>	<b>Investigation Subsidy Rate (percent <i>ad valorem</i>)</b>	<b>Revised Subsidy Rate (percent <i>ad valorem</i>)</b>
Aceitunas Guadalquivir S.L.U. <sup>10</sup>	27.02	11.63
All Others	14.97	11.08

#### Implementation of the Revised Cash Deposit Requirements

As noted above, on January 12, 2023, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, USTR directed Commerce to implement this final determination. With respect to the investigation, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise that were entered, or withdrawn from warehouse, for consumption on or after the date of such implementation. In the final section 129 determination, the rates for Agro Sevilla Aceitunas S.Coop And. and Angel Camacho Alimentacion, S.L. remained unchanged from the investigation. However, these companies have a superseding cash deposit rate (*i.e.*, there have been final results published in a subsequent administrative review), and thus, we will not issue revised cash deposit instructions to CBP for these companies. Similarly, while the rate for Aceitunas Guadalquivir S.L.U. changed in the final section 129 determination, because this company has a superseding cash deposit rate, we will not issue revised cash deposit instructions to CBP for this company. For all other producers or exporters that do not have their own rate, we will direct CBP to require a cash deposit equal to the revised all-others rate above. This notice of implementation of this section 129 final determination is published in accordance with section 129(c)(2)(A) of the URAA.

**Dated:** January 12, 2023.

**Lisa W. Wang,**  
*Assistant Secretary for Enforcement and Compliance.*

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<sup>10</sup> Commerce found the following companies to be cross-owned with Aceitunas Guadalquivir S.L.U.: Coromar Inv., S.L.; AG Explotaciones Agricolas, S.L.U.; and Grupo Aceitunas Guadalquivir, S.L. *See Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 37469 (August 1, 2018).

